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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/648,711

08/27/2003

Wendy Mae Fox

14651

4055

7590

09/27/2004

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EXAMINER

GIBSON, RANDY W

ART UNIT

PAPER NUMBER

2841

DATE MAILED: 09/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/648,711

Applicant(s)

FOX ET AL.

Examiner

Randy W. Gibson

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Priority***

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Canada on 2 July 2003. It is noted, however, that applicant has not filed a certified copy of the Canadian application as required by 35 U.S.C. 119(b).

### ***Claim Objections***

2. Claims 3, 7, 8, & 11 are objected to because of the following informalities: (i) claims 3 & 7 do not further limit the parent claim since they do not add any structural limitations to the apparatus claim. (ii) the parenthetical statement in claim 8 renders the claim indefinite since it is unclear if the statement is part of the claimed limitations or not; (ii) the word "visibl" in claim 11 is misspelled. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herot (US # 5,837,944) in view of Flickinger (US # 4,364,442), Langford (US # 4,825,966), Slagg (US # 4,840,239), Hulburt et al (US # 6,337,446), Morris, Jr. (US #

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3,825,158), Parker et al (US #3,738,388), and Jackson (US # 4,934,469). Herot discloses a beer keg scale that meets all of the limitations of the claims except for the push button for clearing & resetting the scale, the feature of powering down to save battery life, the use of stainless steel for the housing, and the non-slip bottom.

Herot discloses that his scale needs to be calibrated to take into account the proper empty weight of the keg on the scale (Col. 4, lines 15-30). A common way to do this is through the use of a "tare weight" or "zero" button as shown by the examples of Flickinger (Col. 2, lines 36-44), Langford et al (Col. 8, lines 37-68), and Slagg (Abs.). It would have been obvious to design the device of Herot with a tare button, as is known in the art, in order to insure scale accuracy.

It is well known in the weighing art to design a battery powered scale to power down after a period of inactivity in order to save battery life as shown by the example of Hulbert et al (Col. 5, lines 41-44); it would have been obvious to the ordinary practitioner in the art to modify Herot to include this well known energy saving feature.

Although Herot does not expressly state that the scale surface is made from stainless steel, it is well known in the food industry that stainless steel is a preferred material for meeting the sanitary requirements of the USDA as shown by the examples of Morris, Jr. (Col. 3, lines 33-38) and Parker et al (Col. 8, lines 43-56), so it would have been obvious to manufacture the surface of Herot from stainless steel if not already inherently so.

It is known to place non-slip pads on the bottom of a conventional scale as shown by the example of Jackson, and it would have been obvious to modify the scale of Herot to include a non-slip bottom for the same reason.

As for the claimed limitations reciting the exact dimensions of the scale, the scale of Herot would have inherently been made large enough to hold the largest type of keg currently on the market -- otherwise it would not have been marketable. See *MPEP* § 2144.05.

As for the limitation in claim 8 that the display window be located on the scale itself, it is known in the art to place the display on the housing of the scale itself and it also has been held that a mere relocation of parts, without more, would have been obvious to the ordinary practitioner in the art. See *In re Japikse*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950); *In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (CCPA 1975); and, *MPEP* § 2144.04.

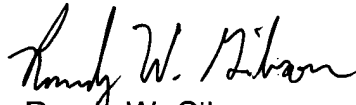
### **Conclusion**

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randy W. Gibson whose telephone number is (571) 272-2103. The examiner can normally be reached on Mon-Fri., 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kamand Cuneo can be reached on (571) 272-1957. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Randy W. Gibson  
Primary Examiner  
Art Unit 2841